

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 MICHAEL AARON KAMBERGER,

11 Plaintiff,

12 v.

13 DEPARTMENT OF CORRECTIONS, et
14 al.

15 Defendants.

CASE NO. C11-5967-BHS-JRC

ORDER TO SHOW CAUSE

16 This 42 U.S.C. §1983 civil rights matter has been referred to the undersigned
17 Magistrate Judge pursuant to 28 U.S.C. §§ 636(b)(1)(A) and (B) and Local Magistrate
18 Judge Rules MJR 1, MJR 3, and MJR 4. The Court has granted plaintiff leave to proceed
19 in forma pauperis.

20 Plaintiff is challenging his convictions out of Mason County for two counts of
21 attempted robbery in the second degree and theft in the third degree. Those convictions
22 have resulted in a fifty-two and one half month sentence (ECF No. 1, Proposed
23 complaint, page 7).
24

1 Plaintiff names the Department of Corrections, three employees of the
2 Department, a Mason County Judge, and the Mason County Prosecutor as defendants.
3 Plaintiff claims that mail was not timely delivered to the proper parties and as a result he
4 was tried and convicted of his crimes in violation of his right to a speedy trial. He seeks
5 monetary damages, reversal of his convictions, and dismissal of the charges.

6 If a petitioner is challenging the very fact or duration of physical imprisonment,
7 and the relief sought will determine whether petitioner is or was entitled to immediate
8 release or a speedier release from that imprisonment, petitioner's sole federal remedy is a
9 writ of habeas corpus. Preiser v. Rodriguez, 411 U.S. 475, 500 (1973).

10 The United States Supreme Court held that "[e]ven a prisoner who has fully
11 exhausted available state remedies has no cause of action under § 1983 unless and until
12 the conviction or sentence is reversed, expunged, invalidated, or impugned by the grant
13 of a writ of habeas corpus." Heck v. Humphrey, 512 U.S. 477, 487 (1994). The Court
14 added:
15

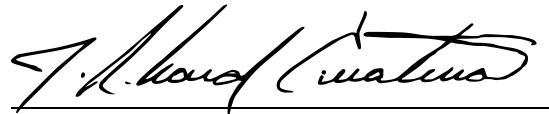
16 Under our analysis the statute of limitations poses no difficulty while the
17 state challenges are being pursued, since the § 1983 claim has not yet
18 arisen. . . . [A] § 1983 cause of action for damages attributable to an
19 unconstitutional conviction or sentence does not accrue until the conviction
20 or sentence has been invalidated.

21 Id. at 489. "[T]he determination whether a challenge is properly brought under § 1983
22 must be made based upon whether 'the nature of the challenge to the procedures [is] such
23 as necessarily to imply the invalidity of the judgment.' Id. If the court concludes that the
24 challenge would necessarily imply the invalidity of the judgment or continuing
confinement, then the challenge must be brought as a petition for a writ of habeas corpus,

1 not under § 1983.” Butterfield v. Bail, 120 F.3d 1023, 1024 (9th Cir. 1997) (*quoting*
2 Edwards v. Balisok, 520 U.S. 641 (1997)).

3 Plaintiff is ordered to show cause why this action should not be dismissed for
4 failure to state a claim. Plaintiff’s response is due on or before December 30, 2011.
5 Failure to respond, or an inadequate response will result in a report and recommendation
6 that this action be dismissed with the dismissal counting as a strike pursuant to 28 U.S.C.
7 § 1915 (e).

8 Dated this 29th day of November, 2011.
9

10
11 

12 J. Richard Creatura
13 United States Magistrate Judge
14
15
16
17
18
19
20
21
22
23
24